

THOMAS SPIESMAN  
MEMBER, NJ AND NY BARS  
DIRECT DIAL No.: 973-889-4208  
E-MAIL ADDRESS: [TSPIESMAN@PBNLAW.COM](mailto:TSPIESMAN@PBNLAW.COM)

April 21, 2017

**VIA E-MAIL & FIRST CLASS MAIL**

Juan Fajardo, Esq.  
Office of Regional Counsel  
New Jersey Superfund Branch  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 17th Floor  
New York, New York 10007-1866

Re: *Offer of Cash Out Settlement at the Diamond Alkali Superfund  
Site Lower 8.3 Miles of Lower Passaic River; Essex and  
Hudson Counties, New Jersey, dated March 30, 2017*  
Our File No.: 02878.67879

*Juan*  
Dear ~~Mr. Fajardo~~:

On behalf of Flexon Industries Corp. ("Flexon"), this will confirm our discussions regarding Flexon's willingness to participate in the referenced U.S. Environmental Protection Agency ("USEPA") cash out settlement offer for Operable Unit 2. Flexon, along with several other parties who received USEPA's cash out settlement offer look forward to the opportunity to discuss certain of the collective comments/revisions that were provided to you on April 12, 2017.

As we have also discussed and as you know, in 2010 Flexon was involved in discussions with the USEPA regarding issues of ability to pay. Because the issue was premature and there was no settlement mechanism available at that time (2010), we did not pursue the ability to pay dialogue. In a letter dated September 7, 2010, the last communication from the USEPA on this issue, Sarah Flanagan had raised a number of follow-up questions regarding Flexon's corporate history. For your convenience, a copy of that letter is attached. With the referenced cash out settlement offer, and your willingness to provide a copy of the USEPA's ability to pay file concerning Flexon, I have now had the opportunity to review a number of issues with my client and we have revisited the referenced USEPA letter and the information that we have regarding the Flexon operations at the 666 Washington Avenue, Belleville, New Jersey site. Based on our review, we have concluded that due to the complexity of the corporate history and the unavailability of records or personnel who possess information with regard to changes in corporate structure and operations during the 1970s through the 1990s, Flexon is not able to

100 SOUTHGATE PARKWAY, P.O. BOX 1997  
MORRISTOWN, NJ 07962-1997  
TELEPHONE (973) 538-4006  
FAX (973) 538-5146  
[www.pbnlaw.com](http://www.pbnlaw.com)

524288



fill in the details requested by the USEPA. With that said, the fact remains that Flexon is not an operating entity and has not conducted any business since the 1990s. We previously provided federal income tax returns which reflect Flexon's inactive status without any income (cash flow) or assets. Flexon has been kept a corporation in good standing solely to prevent the formation of any New Jersey company with the same or similar name.

Due to Flexon's status, the \$280,600 settlement amount is a tremendous burden to the family who formerly operated the company. Furthermore, Flexon's participation in the Diamond Alkali Superfund Site matter during the course of the past 10 years has been funded, by the family who owned and operated the company, without the benefit of insurance coverage. Unfortunately, Flexon was unsuccessful in its efforts to locate insurance policies issued before the implementation of the "absolute pollution exclusion" by insurance companies in 1985. Accordingly, Flexon hereby requests an alternative to the payment of response costs set forth in paragraph 24 of the proposed Administrative Settlement Agreement. Flexon proposes the following payment schedule:

- Payment of \$70,150 within 60 days after the Effective Date of the Settlement Agreement;
- Payment of \$70,150 within 240 days after the Effective Date of the Settlement Agreement;
- Payment of \$70,150 within 420 days after the Effective Date of the Settlement Agreement; and
- A final Payment of \$70,150 within 600 days after the Effective Date of the Settlement Agreement.

Thank you for consideration of the foregoing and please do not hesitate to let me know if you have any questions.

Very truly yours,



Thomas Spiesman

TS:srj  
Enclosure